

Should the MCLE requirement be abolished?

by Karen A. Gould, 2006–2007 VSB President



Last fall I heard a lawyer say that the bar should eliminate the mandatory continuing education requirement. It was late October, and he was unhappy that he had to attend multiple MCLE programs to get his required twelve hours. He said that this took valuable time away from his other work. He reasoned as follows: he was current with developments in his area of practice, and he read legal publications, talked with other attorneys and followed statutory developments. Attendance at continuing legal education programs left less time for his clients' business, which was counterproductive to the purpose of MCLE. When asked if the MCLE requirement might be helpful to other attorneys who did not try to stay current with developments in the law, he asked me if I thought the MCLE requirement served that function for those individuals who procrastinated. He said that many of the lawyers in the program which he had attended that day were not attentive and were reading newspapers, working on laptop computers or revising documents.

On October 1, 2005, approximately 15,000 lawyers of the almost 25,000 licensed active attorneys in the commonwealth had complied with the MCLE requirement of twelve hours of CLE, including two hours of ethics. However, more than 10,000 lawyers had not filed their compliance with the MCLE requirement just thirty days prior to the deadline. On November 1, 2005, the day after the deadline, 2,448 lawyers still had not complied, meaning that the bar was paid \$230,000 in late fees last fall by lawyers certifying

compliance with the MCLE requirements in order to remain licensed. Every year the bar budgets revenue from MCLE noncompliance and late fees, and every year this income rises. There were even 173 lawyers administratively suspended for failing to comply with the MCLE requirements.

Does this mean we should abolish the MCLE requirement? At the risk of being stoned by the approximately ten thousand Virginia lawyers who delay until the last minute to get their CLE credits, the answer is no—emphatically no. The MCLE rules serve a laudable purpose: to improve the quality of legal services in Virginia, which is one of the core missions of the VSB as dictated by the Supreme Court of Virginia. That some lawyers do not take these requirements seriously does not mean that we should abolish them. Instead, I would respectfully suggest that the procrastinators change their lifestyles and schedule attendance at relevant CLE programs throughout the year, rather than waiting till the last minute to attend programs or online courses that are irrelevant to the lawyer's practice.

The MCLE Board has made it easy for Virginia's lawyers to meet their MCLE obligation . . .

Many quality programs are available throughout the year—especially in the months leading up to October 31—

through which one can fulfill the MCLE requirement. The hardworking MCLE Board, chaired by Richmond's Eric Page this year, and the VSB MCLE staff, under the able directorship of Gale Cartwright, approved more than 19,000 CLE courses in 2005, of which 5,400 were delivered by distance learning, such as telephone seminars and the Internet. Virginia was one of the first states to adopt a rule permitting the delivery of distance learning for CLE courses, while requiring that there be a component of interactivity in those programs. Being able to select from the large inventory of approved Internet offerings at a time convenient for the lawyer may mean that lawyers will look for and take courses relevant to their practices, rather than attending whatever live program may be available when they are short of hours near the end of a reporting cycle.

The MCLE Board has made it easy for Virginia's lawyers to meet their MCLE obligation in many different ways with minimum regulation of their choices, through the approximately 19,000 approved courses. Attorneys submitted more than 2,600 course applications for courses that were not preapproved in Virginia (preapproval requires planning and action well in advance of the MCLE deadline). Kudos is owed to the many Virginia lawyers who complete their required attendance of MCLE courses in advance. For those who have had problems meeting this obligation in the past, given the available options, the Virginia State Bar hopes that lawyers will fulfill the MCLE requirement in a way that enhances their practices. ☺